

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.668 of 2003

Alongwith CMPMO No.50 of 2004.

Judgment reserved on: 9.5.2007.

Date of decision: 16th May, 2007.

CWP No.668 of 2003:

The Andora Co. op. Service society Ltd.	Petitioner
-Versus-	
State of H.P. and others	Respondents

CMPMO No.50 of 2004:

Hakam Singh and others	Petitioners
Versus	
Addl.Secretary & others	Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Petitioners: Mr.Ajay Sharma, Advocate

For Respondents: Mr.M.S.Chandel,A.G. with Mr.R.M. Bisht,
Dy.A.G. for respondents-State.
Mr.K.D.Sood, counsel for respondents
3&4 (in CWP No.668 of 2003)
Pt.Om Parkash, counsel for R-5 (in CWP
668 of 2003)

Deepak Gupta, J.

By this judgment we shall dispose of CWP No.668 of 2003 and CMPMO No.50 of 2004 since similar facts are involved in the two cases and the history of the two cases is inextricably linked together.

The Andora Cooperative Agriculture Service Society Ltd., petitioner in CWP No.668 of 2003, (herein after referred to as the Society), is a society registered under the Cooperative Societies Act. Kanshi Ram and Paramjeet Singh, respondents 3&4 in CWP No.668 of 2003 were working as Secretary and Salesman in the Society respectively. The undisputed facts are that serious allegations of embezzlement of funds were levelled against these two persons and an FIR No.80 of 1985 was lodged against them under Sections 408 and 120-B IPC on 23.8.1986. These two officials were placed under suspension by an order of the Managing Committee of the Society dated 26.8.1986. The Managing Committee of the Society thereafter terminated their services on 10.11.1986. The two employees filed two separate appeals before the Assistant Registrar, Cooperative Societies, Una (ARCS). In these appeals the employees challenged the order of suspension and termination passed against them. Both the appeals were partly allowed by the ARCS on 20.2.1987 who upheld the order of the Managing Committee placing the employees under suspension but went on to hold that in case the employees are acquitted in the criminal case they should be reinstated in the service of the Society. This order was not challenged by any party at that time.

The employees were tried in the criminal case and the learned Judicial Magistrate Ist Class(2), Amb acquitted the two employees vide his judgment dated 28th March, 1992. The Society filed a Revision Petition being Criminal Revision No.23 of 1993 against the

said judgment acquitting the employees. This Revision was dismissed by this Court on 22.4.1997.

Thereafter, the employees approached the Society for being reinstated in terms of the order dated 20.2.1987 passed by the ARCS. The Society did not accept their joining and the employees thereafter approached the ARCS for execution of the orders. The ARCS passed orders on 28.3.1998 and directed that the employees are entitled to reinstatement in service pursuant to the orders dated 20.2.1987 and were also entitled to all benefits including increments but were not entitled to backwages. Thereafter, the employees again approached the Society but the Society did not accept their joining reports and the employees were not permitted to join their services. In fact the General House of the Society considered the orders passed by the ARCS and passed a Resolution that the same be challenged. According to the General House the employees were guilty of embezzlement and should not be re-employed in the Society. The General House also ordered that an inquiry be conducted against the employees. An Inquiry Officer was appointed by the ARCS and the Inquiry Officer started the inquiry. According to the petitioners this inquiry was at its final stages when the respondent No.2 for reasons best known to him withdrew the inquiry proceedings vide his order dated 24.12.1998.

The Society filed appeals challenging the orders passed by the ARCS on 3.2.1998, 28.3.1998 and 24.12.1998. In these appeals the order dated 20.2.1987 was also challenged.

These appeals were heard by the Additional Secretary (Cooperative) and decided on 16.11.2002. The Appellate Authority did not directly deal with the challenge to the orders dated 20.2.1987 but held that the orders dated 3.2.1998 and 28.3.1998 passed by the ARCS in the cases of Kanshi Ram and Paramjeet Singh were legal and valid and accordingly dismissed the appeals.

As far as the challenge to the orders withdrawing the inquiries is concerned the Appellate Authority held that the inquiries were dropped because of the dismissal of the Criminal Revision Petition against the acquittal of the employees and on account of Section 69(1) of the H.P. Cooperative Societies Act which prohibits the holding of an inquiry after six years of the act of commission or omission. CWP No.668 of 2003 is directed against the said orders.

CMPMO No.50 of 2004 is an offshoot of the above dispute itself. After the orders dated 16.11.2002 were passed the Society did not re-engage the employees Kanshi Ram and Paramjeet Singh. The Managing Committee of the Society was asked to call its own meeting to implement the orders of the Appellate Authority. The Society did not call a meeting in this behalf and a General House of the Society was held on 8.9.2003 wherein a Resolution was again passed that the said order of the Appellate Authority be challenged in writ proceedings.

A notice was issued to the Managing Committee under Section 37 of the H.P. Cooperative Societies Act to show cause why the Managing Committee should not be superseded for not

complying with the orders passed by the Appellate Authority. The Society was asked to file a reply within 15 days. The admitted facts are that no reply was sent to the ARCS but the reply was sent to the Inspector, Cooperative Societies, Amb. The ARCS, Una passed an order on 22.9.2003 superseding the Committee on the ground that no reply has been filed by the Committee and also on the ground that he had been so directed by the Registrar, Cooperative Societies. The petitioners challenged this order in appeal which appeal was rejected and hence this CMPMO. The Society has however been superseded and an Administrator has taken over.

During the pendency of the petition the employees filed CMP No.2634 of 2005 to place on record the minutes of the General House meeting of the petitioner Cooperative Society dated 31.7.2005 whereby the General House passed a Resolution that the case filed by the Society be withdrawn. An application to the similar effect being CMP No.579 of 2007 was filed by the Administrator for withdrawal of the writ petition. These two applications were opposed by the petitioners. According to the petitioners their supersession was illegal and under challenge in CMPMO No.50 of 2004 and therefore the writ petition could not be withdrawn without their consent. We, therefore, decided to hear both the writ petition and the CMPMO together.

CMPMO No.50 of 2004:

As far as this case is concerned, admittedly the impugned order was passed by the ARCS mainly on the ground that the

Managing Committee had not replied to the show cause notice and also on the ground that the Registrar, Cooperative Societies, Himachal Pradesh vide his letter No.5-17/76-Q(C&M) dated 20.9.2003 had already granted permission to the ARCS, Una to appoint an Administrator to look after the affairs of the Society. From the perusal of the order itself it is apparent that the decision had already been taken even before the orders are passed. The question of appointing an Administrator would only arise after taking a decision that the Managing Committee has to be superseded. Sh.Ajay Sharma has contended that as per past practice and specific directions issued in this behalf by the ARCS himself all correspondence was made through the Inspector, Cooperative Societies, Una and therefore reply to the Show Cause notice was also sent through the Inspector, Cooperative Societies. It is not disputed before us that in fact this reply was received in the office of the Inspector on 5.9.2003. If the Inspector felt that this reply should have been sent to the ARCS he should have either returned it to the society to send it to the ARCS or should have himself directly sent it to the ARCS. He in fact forwarded the same to the ARCS only on 1.10.2003. There is no explanation as to why he sat over this reply to the show cause notice for 25 days.

Another aspect which cannot be lost sight of is the fact that even if no reply to the show cause notice was received, before passing an order removing the democratically elected Managing Committee, the ARCS should have at least gone through the records

of the Society. If he had done so he would have seen that the General House of the Society had already passed a Resolution to challenge the order of the Appellate Authority in the writ petition. He would have in fact noticed that the writ petition had already been filed on 19th August, 2003 much before he passed his order. Every litigant has a right to challenge any order which affects his right in appropriate proceedings. In the present case the Society has challenged the orders of the Additional Secretary before this Court. In fact this Court took up the writ on 23.9.2003 and passed an order of status quo in so far as the joining of the employees is concerned. The order of the learned ARCS has therefore been passed without giving reasonable opportunity to the petitioners in CMPMO No.50 of 2004 and the said order dated 20.9.2003 as well as the order dated 23.1.2004 passed in appeal are accordingly set-aside. The Managing Committee is directed to be reinstated and the ARCS is directed to consider the case afresh after giving due notice to the Managing Committee and giving it a reasonable opportunity of being heard.

CWP No.668 of 2003:

Since we have set-aside the order superseding the Managing Committee, the petitioners who had originally filed the writ petition are entitled to maintain the present petition.

We are of the opinion that the order dated 20.2.1987 passed by the ARCS upholding the order of the Managing Committee dated 26.8.1986 and setting aside the order of termination passed by the Managing Committee on 10.11.1986 has attained finality. The ARCS had ordered that the employees would remain under suspension during the pendency of the criminal proceedings and in

case they were acquitted they would be entitled to reinstatement. This order could not have been challenged by the Managing Committee or the Society after a lapse of more than 11 years when the employees were acquitted. Therefore, the action on the part of the Managing committee in not reinstating the petitioners after their acquittal in the year 1998 is illegal and cannot be held to be proper.

However, in our view the Society was fully justified in asking the ARCS to hold an inquiry into the alleged acts of embezzlement. The acquittal in the criminal case could not debar an inquiry. The ARCS rightly ordered an inquiry to be conducted and as per the pleadings it appears that this inquiry was conducted and was at its final stage when the ARCS passed the order withdrawing the inquiries. This order makes interesting reading and reads as follows:

“No.Coop.RK/-

Dated....Dec:98.

Office of the Assistant Registrar, Cooperative Societies, Una.

OFFICE ORDER

The following enquiries which were entrusted to the District Inspector, Cooperative Societies, Una are hereby withdrawn after careful consideration of the pros and cons of these cases:-

Andora Agr. Service Co-op.Society Ltd.

1.Regarding said society's resolution dt.6.6.98, letter dt.14.5.98 from Shri Khushi Ram, resolution dated 23.10.86 and letter dt.26.3.98 from the President of the aforesaid society- Charge sheet etc.

Enquiry ordered vide this office memo.No.AR/RK/90.

2.Regarding resolution dt.25.6.98 of the said coop. society and reply to notice by Sh.Paramjit Singh etc.

Enquiry ordered vide this office memo.No.AR/RK/2763-66 dated 7.8.98.

Sd/-

(Jagbir Singh)
Assistant Registrar,
Co.op.Societies, Una.
Dated:24 December, 1998.”

A perusal of the above order shows that no reasons whatsoever were given as to why the inquiries were being withdrawn. Once an inquiry has been ordered if the same has to be withdrawn there must be cogent and valid reasons for doing so. In appeal this order was sought to be justified on the ground that this order was only an administrative order and the inquiries were withdrawn because of the dismissal of the Criminal Revision Petition and on the ground that no inquiry could be initiated six years after the acts of omission or commission were taken place. Both these contentions have no force. This Court had dismissed the Revision Petition on 22.4.1997 much before the inquiry proceedings were initiated in June, 1998. This was a previous event and this fact should have been taken note of before initiating the inquiry proceedings. The other argument raised is also without any merit. Section 69 deals with Surcharge proceedings relating to recovery and does not have any connection with disciplinary proceedings. Section 69(1) reads as follows:

“69. Surcharge:-

(1)If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person who is or was entrusted with the organization or management of such society, or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the provisions of this Act, the rules or the bye-law or has caused any deficiency in the assets of the society by breach of trust, or willful negligence or has misappropriated or fraudulently retained any money or other property belonging to the society, the Registrar may, of his

own motion or on the application of the committee, liquidator, or any creditor, inquire himself or direct any person authorized by him, by an order in writing in this behalf, to inquire into the conduct of such person;

Provided that no such inquiry shall be held after the expiry of six years from the date on which any act of commission or omission referred to in this sub-section comes to knowledge.”

It is clear that this section has no applicability to the facts of the case. We, therefore, feel that both the ARCS as well as the Appellate Authority gravely erred in permitting the inquiry proceedings to be withdrawn.

We, therefore, partly allow the writ petition and hold that the inquiry proceedings in question could not be withdrawn.

The question now is whether the employees should be ordered to be reinstated or some other relief should be granted to them. Both the employees were placed under suspension in the year 1986. They have been out of service since then. 21 years have elapsed since these employees went out of service. Both of them are above 50 years. In case we direct their reinstatement they will again have to face the inquiry and there can be another long drawn out legal battle. The society has also strong reservations in re-employing the employees. We cannot lose sight of the fact that the charges against the employees are of embezzlement. In our considered

opinion an employer should not be forced to employ a person in whom he does not have faith and trust.

Keeping in view the entire facts and circumstances we while partly allowing the writ petition filed by the Society hold that the interest of justice will be served in case both the employees are paid a sum of Rs.2,00,000/- each by the employer within a period of twelve weeks from today. This amount shall be deposited in the Registry of this Court within the aforesaid period. In case the Society deposits this amount within the aforesaid time, the petition shall be deemed to have been allowed and the employees shall not be entitled to reinstatement in service or to any backwages or any other monetary benefits except the amount of Rs.2,00,000/- each. In case this amount is not deposited within the aforesaid period then the employees shall be entitled to be reinstated in service and shall also be entitled to backwages alongwith increments as ordered by the authorities. However the Society shall be entitled to get the inquiry proceedings completed and take appropriate action against the employees in accordance with law.

With the aforesaid observations both the writ petition and the CMPMO are disposed of.

CMP No.1334 of 2003:

This is an application for grant of stay. Since the petition has been disposed of, this application has become infructuous.

CMP No.1127 of 2004:

This is an application on behalf of the employees praying that their salaries be released. Since the petition has been disposed of this application has also become infructuous.

CMP No.23 of 2007:

Allowed.

**(Deepak Gupta),
Judge**

May 16, 2007.
PV

**(Surinder Singh),
Judge**